

**PACIFICA NATIONAL BOARD**

1925 Martin Luther King Jr Way  
Berkeley CA 94704-1037

**RE:** FJC Loan to Pacifica Foundation

Dear Pacifica National Board of Directors:

On March 21, 2018 at 9:33 p.m. I received the following email from Directors Heerwagen, Casenave, Diaz and Lark:

*"The Pacifica National Board directors listed below request your review and advice regarding the attached FJC loan document.*

*Our primary intention is to avert the imminent seizure of Pacifica's assets by ESRT. Therefore, we hope to finalize this loan at the PNB meeting Thursday, March 22, 2018.*

*We recommend that you also confer with Pacifica's CFO, Sam Agarwal, which may serve to inform your review.*

*Time is of the essence so we request your response by 3:00 pm PST, Thursday, March 22, 2018.*

*Thank you in advance.*

*Best regards,*

*William Heerwagen  
Adriana Casenave  
Benito Diaz  
Dewayne Lark"*

The loan agreement and all of its schedules and exhibits, which you emailed to me late last night, is in the neighborhood of 156 single-spaced pages. On its face, your request is ludicrous in that without any prior notice to expect a response in less than 24 hours is inherently unreasonable. Further, as all of you know

because you voted to do so, for the last 60 days the PNB has deliberately frozen out both CFO Agarwal and me from receiving documents, emails and discussions pertaining to FJC loan, that regarding which you now unreasonably expect my immediate and comprehensive response.

With your prior actions and those limits in mind, in my opinion the so-called FJC Loan constitutes a patent and abject betrayal of the PNB's fiduciary duties owed to maintain the well-being of the Pacifica Foundation, Inc. Indeed, it is self-destructive.

At issue is a \$3.7 million three-year loan that will be secured by the real properties in Houston, Los Angeles and Berkeley which house KPFT, KPFK and KPFA, respectively, and which Pacifica largely owns free and clear.

At 7.5% the monthly interest payments will be \$23,125. At the 18% default rate, the monthly payments will be \$55,000. The bulk of the loan is allocated to pay off the \$3+ million agreement with Empire State which will release WBAI from incurring further monthly fees, interest and penalties. The cost of the new location for the WBAI broadcast antennae will be approximately \$12,000 per month. Thus at best, Pacifica Foundation will be on the hook for about \$35,000 per month in new obligations with the added risk that default will result in the loss of its three most valuable pieces of real property. And then, of course, in March 2021, assuming that it does not default and lose its real properties along the way, Pacifica will be have to repay the \$3.7 million remaining corpus of the loan, or lose said real properties that house its strongest stations.

As to the provisions of the loan itself, please note the following highlights:

Section 6.1, in part, states: "So long as Borrower is indebted to Lender under the Note and this Agreement is in effect, Borrower shall provide to Lender within one hundred twenty (120) days following the close of each fiscal year of the Borrower, audited annual financial statements of the Borrower."

I addressed this type of provision in the FJC context in my letter to you dated January 2, 2018, to which I now direct your attention and which I incorporate herein. Moreover, Chief Financial Officer Agarwal advised you yesterday as follows:

"We cannot comply with this condition as we are taking about 500-600 days after the year close to complete our audits. I cannot foresee this trend reversing anytime soon as it will require massive efforts and about one year's time to come even close. The extent of the problem can be known by the fact that we are expecting to complete our 9/30/2016 audit by May 31, 2018 which will be over 500 days [from the 9/30/17 close of FY2017]. Our FY 2017 has not even started yet and is not expected to finish by Dec. 31, 2018 which will be about 500 days from the year ending."

In short, Pacifica will be in default as to Section 6. I's requirements from the outset.

Section 5.5 (2), in part, states,

"Borrower, if required, is in compliance in every material respect with the applicable provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") and regulations or published interpretations thereof, has not had a Reportable Act (as defined in ERISA) which has not been waived by regulation, and the Pension Benefit Guaranty Corporation has not taken any action with respect to any Plan (as defined in ERISA)."

With respect to this provision, Chief Financial Officer Agarwal advised you yesterday as follows:

"We are not in compliance with ERISA requirements and will not be so anytime soon. We have not completed our Retirement Plan Audits for FY 2015 and FY 2016 and hence not able to file form 5500 (which is way past its extended due date of 7/15/2017) and there will be serious penalties. We have not paid our Retirement Contributions since FY 2015 and that too will attract penalties. Our Third Party Administrators have resigned and our Retirement Plan is in risk of being disqualified. Similarly, we have not completed our FY 2016 403(b) audit and have not filed Form

5500 which is past its extended due date of 10/15/2017. In both cases no further extensions are possible and will be subject to serious penalties.”

Pacifica will be in default as to Section 5.5 (2)'s requirements from the outset, also. I addressed this issue, too, in my January 2, 2018 letter.

Section 1.1 (17) states:

"Material Adverse Change" means any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Agreement or any other Loan Document, (b) is or could reasonably be expected to be material and adverse to the business properties, assets, financial condition, results of operations or prospects of the Borrower, (c) impairs materially or could reasonably be expected to impair materially the ability of the Borrower to duly and punctually pay or perform any of the Loan, or (d) impairs materially or could reasonably be expected to impair materially the ability of the Lender, to the extent permitted, to enforce its legal remedies pursuant to this Agreement or any other Loan Document; provided that Borrower shall have thirty (30) days after notice thereof to cure the same.

With respect to this provision, Chief Financial Officer Agarwal advised you yesterday as follows:

"[There are] continued losses from operations, non-payment of Retirement Plan Contributions, [failure to pay] Lease Rents can individually or collectively constitute material adverse change and cannot be cured within 30 days. It will constitute a condition of default."

Pacifica will be in default as to Section 1.1 (17)'s requirements from the outset, also.

Pacifica Foundation is a California Non-Profit Corporation with its principal place of business and national office located in Berkeley, California. The offices of its General Counsel, me, is located in the San Francisco Bay Area also. To agree that the law governing

the Loan not be California law, but be New York law instead, and to agree that jurisdiction will be exclusively in New York is self-destructive and not in the best interests of the corporation. To waive the right to a judicial determination of any contract issues is also destructive. As is the promise foreclosing the option to file for reorganization in bankruptcy.

Over the course of the last few months, Grace Aaron, Jan Goodman, Alex Steinberg and the other proponents of this loan have taken a course of conduct which has progressively limited the business choices available to Pacifica. The result of that course of conduct is that the corporation now has very little business judgment latitude remaining. Pacifica is now boxed into a corner where it is compelled to sign a loan without any repayment plan, which puts the physical plants of its strongest radio stations on what has every probability of being a chopping block and where the execution of such chopping will occur not in its home state, the State of California, but in the State of New York, the locus of the Empire State judgment.

Last night, Director Aaron wrote "the risk of doing nothing and allowing ESRT to seize our assets OR the risk of losing assets in bankruptcy are all greater risks than this loan and the settlement agreement with ESRT. To my knowledge no one has explained how these risks are less than the risk of this loan. Nor has a better, less risky, alternative been offered. "

Over the course of the past several months, Director Aaron has engaged in every tactic to shut down debate and points of view that challenge her own. I direct the PNB to my letters dated November 1, 2017, November 20, 2017, December 14, 2017, January 2, 2017, January 11, 2018, as well as a number of emails and reports from me, from CFO Agarwal, bankruptcy expert Reno Fernandez and Director Crosier as ED and as Director. The risks of the present path were identified, and the bankruptcy alternative was clearly spelled out.

In Recital B, the Loan Agreement specifies the scope of debt that the loan proceeds purportedly will address "pending a swap or sale of one or more radio station licenses . . . to repay this loan."

Even in the face of the loan's own language Director Aaron last night continued to contend that "The sale or swap of a signal . . . is a very lengthy process and will not help resolve the financial dilemma we are currently facing."

Trying to have it both ways is not exercising prudent business judgment.

In my opinion, based on the impractically and unreasonably limited time I have had to review 156 single-spaced pages that comprise the FJC loan, it appears to be highly selfdestructive and a betrayal of the duty of the PNB to ensure Pacifica's economic and practical survival.

PACIFICA GENERAL COUNSEL